REMARKS

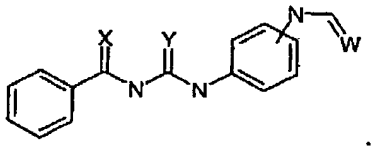
LACK OF UNITY OF INVENTION OBJECTION

The Examiner has objected to Claims 1-7 on the grounds that the claims are drawn to an improper Markush group. The Examiner cites In re Harnisch, stating that unity of invention exists where compounds included within a Markush group (1) share a common utility and (2) share a substantial structural feature disclosed as being essential to that utility. The Examiner alleges that the claimed subject matter does not share a substantial feature disclosed as being essential to that utility. The Examiner further stated that the members of the instant Markush groups possess widely different physical and chemical properties, that they are not considered functionally equivalent and are so diverse that they demonstrate dissimilar and unrelated properties. Applicants do not agree. The compounds of the instant invention possess a very large common core structure and this core structure *is essential* to the disclosed function.

Applicants submit that the Restriction is improper because it divides Applicants' Markush claim in contravention to the requirements of MPEP §803.02. In particular, MPEP §803.02 provides that there is no basis for an Election/Restriction of a Markush claimed invention where two factors are met, i.e.,

...compounds included within a Markush group (1) share a common utility and (2) share a substantial structural feature...

Applicants' Markush claimed invention meets the aforesaid factors. That is: (A) The set of compounds embraced by Group I have a substantial structural feature, i.e. the compound of formula



; and

B) the compounds share a common utility, i.e., they inhibit the activity of glycogen phosphorylase and would therefore be useful to treat the indications claimed in the instant application. Applicants believe the objection to the Markush structure is unsupported and improper.

Rejection of Claims Rejection under 35 USC 112, Second Paragraph

A. Applicant has amended claims 1 and 2 to recite "or a pharmaceutically acceptable salt thereof" per the Examiner's suggestion.

B. The disclaimer in Claim 2 contains an unintentional typographic error. The disclaimer for R8 should read "provided the radical R8 is not substituted or unsubstituted NH-phenyl". The claim has been amended accordingly.

C. Claim 3, line 6 has been amended per the Examiner's suggestion to recite "R14, R15 independently of one another are H or (C_1-C_6)alkyl...".

D. Claims 4-6 have been amended to recite "and an acceptable carrier" per the Examiner's suggestion. Claim 7 already recites this term.

Rejection of Claims 1, 2, and 4-7 under 35 USC 102(b)

The Examiner has rejected Claims 1, 2, and 4-7 as being anticipated by Brouwer et al (US Patent 4,665,235). However, the compounds disclosed in Brouwer have been disclaimed i.e. Claims 1, 2, and 4-7 exclude compounds of the formula I wherein radicals R6, R7, X, Y and R8 have the following meanings at the same time:

R6 is H, Cl, CF_3, CH_3;

R7 is H;

X is O; and

Y is O, S;

R8 is substituted or unsubstituted NH-phenyl.

Therefore, the compounds of the present invention are novel in view of Brouwer and the rejection under 35 USC 102(b) is improper.

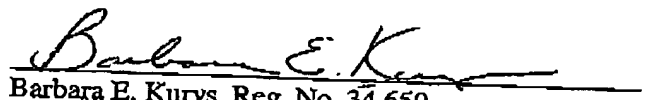
The Examiner has also rejected Claims 1 and 2 under 35 USC 102(b) as being anticipated by Aguro-Kanesho Co., LTD. Applicant has amended the claims so that R3, R4, R5 and R6 are no longer defined as "F". The Aguro Kanesho compounds always have a fluorine substituent at the middle phenyl ring. Applicants believe this amendment is sufficient to overcome the rejection of Claims 1 and 2 under 35 USC 102(b) in view of Aguro-Kanesho.

Conclusion

In view of the amendment and remarks contained herein, Applicants submit the application is in condition for allowance.

The Commissioner is hereby authorized to charge the fee required and any additional fees that may be needed to Deposit Account No. **18-1982** in the name of Aventis Pharmaceuticals Inc.

Respectfully submitted,



Barbara E. Kurys, Reg. No. 34,650
Attorney/Agent for Applicant

Aventis Pharmaceuticals Inc.
Patent Department
Route #202-206 / P.O. Box 6800
Bridgewater, NJ 08807-0800
Telephone (908) 231-2965
Telefax (908) 231-2626

Aventis Docket No. DEAV2002/0048US NP